

petition.

The Court, having reviewed the parties' submissions on this matter, DENIES the Petition.

II. BACKGROUND

Petitioner, a native and citizen of China, entered the United States as a lawful permanent resident in November 1982 when he was thirteen. Petitioner's Points and Authorities in Support of the Petition for a Writ of Habeas Corpus at 3 ("Pet."). On November 10, 1986, in California state court, Petitioner pled guilty to eighteen criminal charges, sustaining an aggravated felony conviction. Id. at 4. He was sentenced to life with the possibility of parole for kidnapping to commit robbery and eight years for robbery of an inhabited dwelling.¹ Id. Petitioner was released on parole on March 4, 2005, after having served nineteen years in California State custody. Id.

The DHS, as mandated by 8 U.S.C. § 1226(c), took Petitioner, a criminal alien, into custody on March 10, 2005. Id. at 5. The following day, the Bureau of Immigration and Customs Enforcement of the DHS issued to Petitioner a Notice to Appear, charging him with being deportable for a violation of 8 U.S.C. § 1227(a)(2)(A)(iii) because he had been convicted of an aggravated felony. Id.

At the immigration hearing, Petitioner moved for a change in his custody status, requesting release on bond and contending that retroactive application of Section 1226(c), which Congress enacted

¹ The sentences on the other counts were stayed. Pet. at 4.

1 ten years after his conviction, was impermissible. Pet. at 5.
2 The Immigration Court denied Petitioner's request, declaring that
3 Petitioner, having been convicted of an aggravated felony, fell
4 under the authority of Section 1226(c). Id. The Board of
5 Immigration Appeals affirmed the Immigration Court's order without
6 opinion. Id.

7 Petitioner's wife, Susan Smith ("Smith"), in July 2005, filed
8 with the DHS a Petition for an Alien Relative, seeking a visa on
9 her spouse's behalf. Id. At the hearing, the Immigration Judge
10 stated that it would take 18-20 months to adjudicate Smith's
11 petition. Id. The Immigration Court has put over Petitioner's
12 removal proceedings until it has ruled on Smith's petition. Id.
13 Petitioner remains in custody with the DHS. Id. at 6.

14 In 1986, when Petitioner was convicted, 8 U.S.C. § 1252(a)
15 (1986) - hereinafter "Section 1252(a)" - allowed the Attorney
16 General, in his discretion, to arrest and take into custody any
17 alien pending a determination of deportability. After taking
18 custody of such a person, the Attorney General could have, in his
19 discretion and pending determination of deportability, either
20 continued to retain the person in custody, released the person on
21 bond and under certain conditions, or released the person on
22 conditional parole. Id. Any release could be revoked at any
23 time. Id.

24 In 1996, Congress amended this and other immigration
25 statutes, replacing Section 1252(a) with 8 U.S.C. § 1226.
26 Currently, the Attorney General has discretion under Section
27 1226(a) whether to arrest an alien. In contrast, Section 1226(c),
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1 which applies to criminal aliens, removes this discretion. The
2 statute mandates that the Attorney General must take into custody
3 certain criminal aliens, such as Petitioner. Id. Section 1226(c)
4 does not allow the Attorney General to release these aliens on
5 bond or conditional parole. Id.

6 **III. DISCUSSION**

7 Petitioner raises two contentions. First, he contends that
8 the application of Section 1226(c) to his case is impermissibly
9 retroactive. Pet. at 5. Second, in the alternative, he contends
10 that mandatory detention for an unreasonable time violates his
11 right to Due Process under the Fifth Amendment.

12 As stated above, after Petitioner's 2005 release from
13 California state prison, the DHS took Petitioner into custody
14 pursuant to Section 1226(c), which mandates the detention of
15 individuals such as Petitioner. Petitioner now claims that it
16 would be impermissible to apply Section 1226(c) to his case, under
17 the presumption of retroactivity.

18 The Court finds that it would be a waste of judicial time and
19 resources to grant the Petition and force Petitioner's custodians
20 to exercise their discretion under the law as it stood at the time
21 of Petitioner's convictions. If the Petition were granted,
22 Petitioner's custodians would find their discretion fettered by
23 Section 1226(c) which mandates they retain individuals such as
24 Petitioner.

25 The Court is fully cognizant of the procedural steps one must
26 take in testing the applicability of retrospective application of
27 the instant statute. However, in the adjudication of the issues
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1 of this case, it appears that the reasonable and logical approach
2 would be to be to broadly construe the statute's applicability in
3 order to prevent a waste of judicial time and resources.
4 Congress's language is bell-clear, broad, and unambiguous: the
5 statute applies to "any alien" released after the statute's
6 effective date.²

7 The Court will not consider Petitioner's due process
8 contentions, primarily because the length of his detention was
9 extended because his spouse filed a petition on his behalf. One
10 cannot justifiably oppose a detention whose extension was caused
11 by a delay of one's making. The solution is clear: if Smith
12 withdraws her petition, Petitioner's removal hearing will occur
13 earlier.

14 **IV. CONCLUSION**

15 For the reasons discussed above, the Court DENIES the
16 Petition.

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18 IT IS SO ORDERED.

19 Dated: November 30, 2005

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21 _____
22 UNITED STATES DISTRICT JUDGE

23 ² Congress allowed the Attorney General to delay enforcement
24 of § 1226(c) for up to two years if he thought that "there is
25 insufficient detention space and Immigration and Naturalization
26 Service personnel available to carry out section 236(c)." Pub.L.
27 104-108, Div. C, Title III, § 303(b), September 30, 1996, 110 Stat.
28 3009-586, section 2. After this period of delay, "the provisions
of such section 236(c)...shall apply to individuals released after
such periods." *Id.* At the latest, the statute would apply to
aliens released during or after 1998. Because Petitioner was
released in 2005, the statute applies to him.